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8 Attorneys for Plaintiffs
THOMAS WEISEL PARTNERS LLC and
9 THOMAS WEISEL INTERNATIONAL PRIVATE
LIMITED
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 THOMAS WEISEL PARTNERS LLC, a
16 Delaware limited liability company, and
THOMAS WEISEL INTERNATIONAL
17 PRIVATE LIMITED, an Indian company,

18 Plaintiffs,

19 v.

20 BNP PARIBAS, a French corporation, BNP
PARIBAS SECURITIES (ASIA) LIMITED,
21 a Hong Kong company, and PRAVEEN
CHAKRAVARTY, an individual,

22 Defendants.
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No. C-07-6198 MHP

Action Filed: December 6, 2007

STIPULATED PROTECTIVE ORDER

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 1. This Protective Order shall apply to the production and exchange of all
2 documents, testimony, interrogatories, disclosures, and other information produced, given,
3 or exchanged by and among all parties and nonparties (“discovery”) in the course of this
4 action, which the producing party (including third-party witnesses or other entities from
5 whom such discovery is sought) reasonably and in good faith believes to contain trade secret
6 or confidential proprietary, technical, financial, commercial, or personal information and
7 which is owned or controlled by a party, or is owned or controlled by a third party who
8 elects or is ordered to provide discovery under the terms and conditions of this Protective
9 Order (hereinafter “CONFIDENTIAL MATERIALS”).

10 2. The term CONFIDENTIAL MATERIALS shall be interpreted to mean
11 trade secrets as defined under California Civil Code §3426.1(d) and applicable case law;
12 other confidential and proprietary technical, research, or development information; pictorial
13 or other physical representations; commercial, financial, budgeting and/or accounting
14 information; information relating to the terms, conditions and negotiation of expired or
15 existing leases or other agreements; existing and potential customers, marketing studies,
16 performance and projections, business strategies, decisions and/or negotiations, personnel
17 compensation, evaluations and other employment information; confidential and proprietary
18 information about affiliates, parents, subsidiaries, and third parties with whom the Parties to
19 this action have had business relationships; and private personal information (including
20 financial and medical information). The scope of this Order shall be understood to
21 encompass not only those items or things that are expressly designated as CONFIDENTIAL
22 MATERIALS, but also any information derived therefrom, and all copies, photographs,
23 excerpts, and summaries thereof, as well as testimony and oral conversation derived
24 therefrom or related thereto.

25 3. Each party or third party producing CONFIDENTIAL MATERIALS
26 (“Providing Party”) shall have the right to designate such materials as “CONFIDENTIAL”
27 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” In addition, each party
28 claiming an interest in any information, documents or things produced by a third party shall

1 have the right to designate or redesignate such materials in favor of more confidential
 2 treatment in accordance with this Protective Order. This designation shall be made by
 3 labeling or marking documents and things deemed to be CONFIDENTIAL MATERIALS
 4 with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 5 EYES ONLY" on each page.

6 4. The designation by any party or third party ("Designating Party")¹ of any
 7 document, material, or information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
 8 – ATTORNEYS' EYES ONLY" shall constitute a representation that such document,
 9 material, or information has been reviewed by an attorney (or paralegal or other professional
 10 acting under such attorney direction) for the Designating Party and that there is a good faith
 11 basis for such designation. The designation "HIGHLY CONFIDENTIAL – ATTORNEYS'
 12 EYES ONLY" shall be reserved for documents and information the secrecy of which is vital
 13 to the Designating Party, and that have not been already legitimately disclosed on a
 14 nonconfidential basis to an employee or representative of the party receiving
 15 CONFIDENTIAL MATERIALS ("Receiving Party") and which comprise highly sensitive
 16 agreements, future business plans, including marketing plans, technical information relating
 17 to research for or production of certain products, technical, business and research
 18 information regarding future products, certain highly sensitive financial information and
 19 forecasts, customer lists, pricing data, cost data, customer orders, and customer quotations.
 20 In addition, the Designating Party shall have the further right to designate and mark
 21 documents, information and materials that relate to other information that the Designating
 22 Party reasonably believes is of such nature and character that disclosure of such information
 23 to the Receiving Party would be harmful to the Designating Party as "HIGHLY
 24 CONFIDENTIAL – ATTORNEYS' EYES ONLY." A party or third party who
 25 inadvertently fails to mark an item as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
 26 – ATTORNEYS' EYES ONLY" at the time of production shall have the right at any time

27 ¹All references in this Order to the Designating Party shall be understood to encompass
 28 the Providing Party.

1 to correct such a failure and redesignate CONFIDENTIAL MATERIALS as
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY."
3 Such correction and notice thereof shall be made in writing, accompanied by substitute
4 copies of each item, and appropriately marked "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL - ATTORNEYS' EYES ONLY". Within five (5) business days of receipt
6 of the substitute copies, the Receiving Party shall return the previously unmarked items and
7 all copies thereof.

8 5. Any CONFIDENTIAL MATERIALS shall be stamped with the legend
9 "CONFIDENTIAL", "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY", or
10 comparable legends, in a manner that does not render any portion of the document illegible.
11 If counsel for any party believes that only a portion of the document is entitled to treatment
12 as CONFIDENTIAL MATERIALS notwithstanding the designation of the entire document,
13 the parties will follow the procedures set forth in Paragraphs 20 for resolving objections to
14 the designation under this Order.

15 6. Notwithstanding the requirements of Paragraph 5 above, to the extent that
16 matter stored or recorded in the form of electronic or magnetic media (including information
17 databases or programs stored on computers, discs, networks, tapes or other storage media)
18 ("ESI") is produced by any party or third party in such form, the Designating Party may
19 designate such material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —
20 ATTORNEYS' EYES ONLY" by cover letter referring generally to such matter and by
21 clearly marking the media or other tangible thing with the appropriate designations.
22 Whenever the Receiving Party reduces such ESI to hard-copy form, the Receiving Party
23 shall mark such hard-copy form with the appropriate confidentiality legend provided for in
24 Paragraph 5 above.

25 7. Deposition transcripts, or portions thereof, may be designated as subject to
26 this Protective Order either (1) at the time of deposition, by designation on the record as
27 either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES
28 ONLY" or (2) within ten (10) business days following receipt of the transcript, by providing

1 written notice to the reporter and all counsel of record, in which case all counsel shall mark
2 the copies or portions of the designated transcript in their possession, custody, or control as
3 directed by the designating party. Until expiration of aforesaid ten (10) day period, all
4 deposition transcripts shall be considered and treated as though they are designated
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (the "DEFAULT
6 DESIGNATION"). If at any time prior to the expiration of the aforesaid ten (10) day period,
7 a party files any document with the Court referencing such a deposition transcript, the
8 parties must make their respective designations concerning that transcript, if any, within
9 three (3) days of the filing of such a document. If a party files any papers with the Court
10 which include or disclose the contents of such a deposition transcript, the non-filing party
11 reserves the right to oppose the relief sought or position taken in such papers on the ground
12 that the DEFAULT DESIGNATION has prejudiced the non-filing party's ability to respond.
13 When testimony designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
14 ATTORNEYS' EYES ONLY" is elicited during a deposition, persons not entitled to receive
15 such information under the terms of this Protective Order shall be excluded from the
16 deposition at the request of the Designating Party during such designated testimony.

17 8. CONFIDENTIAL MATERIALS shall be treated by each Receiving Party
18 in accordance with this Protective Order unless and until this Court rules to the contrary or
19 the Designating Party agrees otherwise. Unless and until the Court rules or the Designating
20 Party otherwise agrees, access to or disclosure of materials designated "HIGHLY
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall be limited to Very Highly
22 Restricted Qualified Persons, as follows:

23 a. This Court and those employed by this Court (subject to the provisions
24 of Paragraph 12 of this Order);

25 b. Outside counsel of record for any party to this Action, and their
26 paralegals, clerical, and support staff working on this Action; and

27 c. Outside experts or outside consultants retained by a party's outside
28 counsel of record for purposes of this litigation.

1 9. Unless and until the Court rules or the Designating Party otherwise agrees,
2 access to or disclosure of materials designated CONFIDENTIAL shall be limited to
3 Qualified Persons, as follows:

4 a. This Court and those employed by this Court (subject to the provisions
5 of Paragraph 12 of this Order);

6 b. Outside counsel of record for any party to this Action, and their
7 paralegals, clerical, and support staff working on this Action;

8 c. The Receiving Party, if an individual; if the Receiving Party is an
9 entity, the officers, directors, and employees (including in-house counsel) of the Receiving
10 Party to whom disclosure is reasonably necessary for this litigation; and

11 d. Outside experts or outside consultants retained by a party or a party's
12 outside counsel of record for purposes of this litigation.

13 10. CONFIDENTIAL MATERIALS shall not be disclosed to any person
14 referred to in subparagraphs 8(c) or 9(c)-(d) unless and until such person has been provided
15 with a copy of this Order, has been informed that the provisions hereof shall apply to such
16 person, and has signed the undertaking in the form of Exhibit A hereto. The counsel of
17 record for the party wishing to disclose the CONFIDENTIAL MATERIALS to such person
18 shall maintain the original signed undertaking, and shall deliver by hand, facsimile, or email
19 a copy of any such undertaking to all other parties to this action within three (3) business
20 days of execution of same by any person referred to in subparagraphs 8(c) or 9(c)-(d).
21 Within three (3) business days of the receipt by hand, facsimile or email of any such
22 undertaking, any other party may object to disclosure of CONFIDENTIAL MATERIALS to
23 the person who executed such an undertaking by delivering by hand, facsimile, or email a
24 written objection thereto to counsel serving the undertaking. Failure to so object constitutes
25 a consent to such disclosure. In the event that a party objects to disclosure of
26 CONFIDENTIAL MATERIALS to a person who has executed an undertaking, such
27 CONFIDENTIAL MATERIALS shall not be disclosed to any individual other than those to
28 whom disclosure is permitted by the provisions of this Order until such dispute has been

1 resolved by agreement of the parties or by order of this Court. However, all objections must
2 be made in good faith, and no objection may be made solely for the purpose of delaying any
3 person's receipt or review of CONFIDENTIAL MATERIALS or interfering with a party's
4 ability to work with an expert of its choosing. Further, no party shall be required to serve on
5 all other parties an undertaking signed by any individual, nor to reveal the identity of any
6 individual, who has been retained as a nontestifying expert consultant, unless and until such
7 individual has been disclosed as a testifying expert in this action. However, all other parties
8 to this action must be notified within three (3) business days of the fact that a nontestifying
9 expert consultant has executed such an undertaking.

10 11. In the event that counsel representing any party in this Action believes that
11 it is necessary to disclose CONFIDENTIAL MATERIALS to an individual to whom
12 disclosure is not permitted by this Order, such counsel shall deliver by hand, email or
13 facsimile to counsel for the Designating Party a letter ("disclosure letter") identifying the
14 individual to whom it is desired to make such disclosure and the specific CONFIDENTIAL
15 MATERIALS involved. Within three (3) business days of the receipt by hand, email or
16 facsimile of the disclosure letter, counsel for the Designating Party may object to such
17 disclosure by delivering by hand, email or facsimile a written objection thereto to counsel
18 serving the disclosure letter. Failure to so object constitutes a consent to such disclosure. In
19 the event that a Designating Party objects to such disclosure, such CONFIDENTIAL
20 MATERIALS shall not be disclosed to any individual other than those to whom disclosure is
21 permitted by the provisions of this Order until such dispute has been resolved by agreement
22 of the parties or by order of this Court. If a party files any papers with the Court that include
23 or disclose the contents of CONFIDENTIAL MATERIALS, the non-filing party reserves the
24 right to oppose the relief sought or position taken in such papers on the ground that the filing
25 party has objected to the disclosure of CONFIDENTIAL MATERIALS as requested in a
26 disclosure letter and that said objection has prejudiced the non-filing party's ability to
27 respond.
28

12. Any party or third party who wishes to file CONFIDENTIAL MATERIALS under seal with the Court must first move the Court to enter an order authorizing the sealing of the particular document or portion thereof, and must establish good cause to seal the document or portion thereof. Prior to the Court's issuance of a sealing order, the CONFIDENTIAL MATERIALS as to which sealing is requested shall be lodged in sealed envelopes or other appropriate sealed containers on which shall be the information required by Local Rule 79-5, including the title of this action, an indication of the nature of the contents of the sealed envelope or container, the words "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL," as appropriate, and the following statement: "This envelope, lodged under seal pending Court ruling, contains Confidential Materials, and is not to be opened or the contents revealed except by order of the Court." A copy of this Stipulated Protective Order shall be submitted with the lodged materials. Upon issuance of the Court's sealing order, the clerk shall then file the CONFIDENTIAL MATERIALS under seal in accordance with Local Rule 79-5. Any document filed or lodged with the Court containing CONFIDENTIAL MATERIALS shall indicate clearly which portions are designated to be confidential. To the extent such CONFIDENTIAL MATERIALS are referenced or described in a hearing in this Court, the Court shall, in its discretion, conduct the hearing in camera, and the transcripts and the proceeding shall be sealed (and kept under seal until further order of the Court).

13. CONFIDENTIAL MATERIALS may be included in pleadings, motions, briefs, affidavits, statements, reports, and responses to interrogatories or requests for admissions, provided that the individual or entity who includes the CONFIDENTIAL MATERIALS in the document shall place the confidentiality legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" on the front of any such document and, in the event such material is provided to the Court, in strict accordance with the provisions of Paragraph 12 of this Order. Only those portions of any such pleadings, motions, briefs, affidavits, statements, reports, and responses to interrogatories or requests for admissions containing CONFIDENTIAL MATERIALS shall be considered

1 CONFIDENTIAL MATERIALS, and such material shall be disclosed to persons only in
2 accordance with the provisions of this Order.

3 14. No material designated as "CONFIDENTIAL" or "HIGHLY
4 CONFIDENTIAL — ATTORNEYS' EYES ONLY" shall be filed in the public record of
5 this Action except as provided herein.

6 15. CONFIDENTIAL MATERIALS of a Providing Party shall not be made
7 public by the Receiving Party or divulged to anyone other than the persons entitled to access
8 as set forth herein. No CONFIDENTIAL MATERIALS shall be reproduced or used except
9 in connection with this action. Materials marked "HIGHLY CONFIDENTIAL —
10 ATTORNEYS' EYES ONLY" shall not be copied, reproduced, or otherwise duplicated
11 except to the extent that a log is kept identifying the number of any such copies and the
12 person in possession of each copy.

13 16. Any person in possession of CONFIDENTIAL MATERIALS who receives
14 a subpoena (or other process) from any person (including natural persons, corporations,
15 partnerships, firms, governmental agencies, departments, or bodies, boards, or associations)
16 who is not a party to this Order seeking production or other disclosure of such
17 CONFIDENTIAL MATERIALS shall promptly give telephonic notice and written notice by
18 overnight delivery, email and/or facsimile to outside counsel of record for the Designating
19 Party, enclosing a copy of the subpoena or other process. In no event shall production or
20 other disclosure be made before ten (10) days following the date on which notice is given.

21 17. All notes, memoranda, reports, and other written communications ("notes")
22 that reveal or discuss information contained in CONFIDENTIAL or HIGHLY
23 CONFIDENTIAL — ATTORNEYS' EYES ONLY materials shall be given the same
24 protections under this order as though they were designated as such.

25 18. Nothing in this Protective Order shall require disclosure of material that
26 counsel for a party or a third party contends is protected from disclosure by the attorney-
27 client privilege or the attorney work-product immunity, any other privilege, or on any other
28 basis. This shall not preclude any party from moving the Court for an Order directing the

1 disclosure of such material. Nor shall this Protective Order prevent any party from seeking
2 protection of any privileged document or thing disclosed inadvertently, unintentionally, or in
3 camera.

4 19. The acceptance by a party of CONFIDENTIAL MATERIALS designated
5 in accordance with this Protective Order shall not constitute an admission or concession or
6 permit an inference that such designation is correct. This Protective Order shall not
7 foreclose a party from moving for an Order that any such CONFIDENTIAL MATERIALS
8 are not, in fact, confidential.

9 20. Any party may challenge the designation of material as CONFIDENTIAL
10 or HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY by so notifying in writing
11 the party or non-party who made the original designation and counsel for that party. Such
12 notice shall specify with particularity the material which is deemed to have been improperly
13 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEY'S EYES
14 ONLY and each reason why such material should not continue to be treated as
15 CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY. To
16 avoid inadvertent declassification, counsel for the party challenging the designation shall
17 also speak directly to the designating party's counsel to ensure that the designating party
18 actually received the written notification of the challenge. If the designating party does not
19 thereafter provide a written response within 14 days of receipt of such notice, such
20 challenged material shall no longer be deemed CONFIDENTIAL or HIGHLY
21 CONFIDENTIAL—ATTORNEY'S EYES ONLY, as the case may be. If a written response
22 is made within such 14-day period, the material shall be deemed CONFIDENTIAL or
23 HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY, as the case may be, unless
24 otherwise ordered by this Court. Any written response by the Designating Party should
25 specify in good faith portions of the material that the producing party believes to be covered
26 under this Protective Order and suggest methods for redacting those portions to allow
27 declassification. Upon receipt of such objection and response in writing, the Designating
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CANADY
FALK
& RABKIN
A Professional Corporation

1 Party and the objecting party shall attempt in good faith to resolve any disagreement
2 concerning the designation.

3 21. Nothing herein shall prevent any person from seeking, by written agreement
4 of the parties or court order, further, greater, or lesser protection with respect to the use of
5 any CONFIDENTIAL MATERIALS in connection with this Action. Nothing herein shall
6 be construed to limit in any way any party's use of its own CONFIDENTIAL MATERIALS.

7 22. CONFIDENTIAL MATERIALS may be used to prepare for and conduct
8 discovery and to prepare for trial, subject to all restrictions described in this Order.
9 CONFIDENTIAL MATERIALS may also be used in testimony at trial, in connection with
10 any motion, at any hearing, and at depositions, and may be offered in evidence at trial or in
11 connection with any motion, subject to all restrictions described in this Order.

12 23. Any person may move the Court for a modification of or relief from the
13 terms of this Order at any time upon notice to all parties. The Court may modify or grant
14 relief from the terms of this Order upon request of any party if the circumstances so require.

15 24. Restrictions and obligations set forth herein relating to CONFIDENTIAL
16 MATERIALS shall not apply to any information that the parties agree, or the Court rules,
17 was or has become public knowledge other than as a result of disclosure by the Receiving
18 Party.

19 25. CONFIDENTIAL MATERIALS, at the option of the receiving person or
20 entity, shall be returned to the producer or destroyed within thirty (30) days after a Court
21 order finally terminating this Action from which no appeal is taken. Upon request, each
22 party shall provide the producing person or entity with a letter certifying that all
23 CONFIDENTIAL MATERIALS required to be returned or destroyed pursuant to the
24 provisions of this paragraph have been returned or destroyed. However, nothing contained
25 herein shall prevent counsel for any party from maintaining in his/her files copies of
26 pleadings, affidavits, motions, briefs, or other documents filed with the Court containing
27 CONFIDENTIAL MATERIALS, provided that such counsel take appropriate steps to
28 prevent the disclosure of said material contrary to the terms of this Order.

1 26. The provisions of this Order concerning CONFIDENTIAL MATERIALS
2 shall survive the termination of this Action and shall continue in full force and effect
3 thereafter, and the Court shall retain jurisdiction after conclusion of this litigation for the
4 purpose of enforcing this Protective Order.

5
6 Dated: May , 2008

GILBERT R. SEROTA
MARK A. SHEFT
MICHAEL L. GALLO
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

10 By: _____/s/
11 MARK A. SHEFT

12 Attorneys for Plaintiffs
13 THOMAS WEISEL PARTNERS LLC
14 and THOMAS WEISEL
INTERNATIONAL PRIVATE
LIMITED

15
16 Dated: May , 2008

JOSEPH E. ADDIEGO, III
DAVIS WRIGHT TREMAINE LLP

18 LEIV BLAD
19 CLIFFORD CHANCE

20 By: _____
JOSEPH E. ADDIEGO, III

21 Attorneys for Defendants BNP
22 PARIBAS and BNP PARIBAS
SECURITIES (ASIA) LIMITED

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

EXHIBIT A

UNDERTAKING RE
PROTECTIVE ORDER

UNDERTAKING OF _____

I, _____, do solemnly swear as follows:

1. My address is _____.

My present occupation is _____.

2. I have received a copy of the Protective Order that was issued by the United States District Court in *Thomas Weisel Partners LLC et al. v. BNP Paribas et al.*, No. C-07-6198 (MHP), and have carefully read and understand its provisions.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Protective Order, and will not copy or use except for purposes of this action, any information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" that I receive or review in this action, except to the extent that such CONFIDENTIAL MATERIALS are or become public information in accordance with the Protective Order.

4. I agree that I will not copy, reproduce, or otherwise duplicate any information designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" except as provided in this Protective Order.

5. I hereby submit to the jurisdiction of the United States District Court, Northern District of California, for the purpose of enforcement of this Protective Order.

Executed this _____ day of _____ 200__, at

_____.
